

SENATE BILL No. 84

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-39-1-3; IC 29-3-12-1.

Synopsis: Guardian power to request health records. Amends the health records law to authorize the guardian of a patient who was incompetent to request health records of the patient after the patient's death. Amends the guardianship law to provide that: (1) the guardianship of an incapacitated person is not terminated upon the incapacitated person's death; and (2) the court may not terminate the guardianship of an incapacitated person: (A) until at least 60 days after the incapacitated person's death; or (B) if the guardian, less than 60 days after the incapacitated person's death, requests access to records relating to the incapacitated person's death, until the guardian is granted access to the records or until the guardian's request for access to the records is denied and the guardian states that the guardian will not appeal the denial of access, exhausts all administrative and judicial appeals of the denial of access, or is barred due to the passage of time from appealing the denial of access.

Effective: July 1, 2016.

Breaux

January 5, 2016, read first time and referred to Committee on Civil Law.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 84

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-39-1-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) Health records
3 may be requested by a competent patient if the patient is:
4 (1) emancipated and less than eighteen (18) years of age; or
5 (2) at least eighteen (18) years of age.
6 (b) If a patient is incompetent, the request for health records may be
7 made by the parent, guardian, or custodian of the patient.
8 (c) Health records of a deceased patient may be requested:
9 (1) by a coroner under IC 36-2-14-21 or by the personal
10 representative of the patient's estate;
11 (2) if the deceased does not have a personal representative, **by the**
12 spouse of the deceased patient; ~~may make a request.~~
13 (3) ~~if there is no the deceased patient did not have a spouse and~~
14 **does not have a personal representative, by:**
15 (+) (A) a child of the deceased patient; or
16 (2) (B) the parent, guardian, or custodian of the child if the
17 child is incompetent; ~~may make a request. or~~



(4) if the deceased patient was incompetent and had a guardian, by the guardian.

SECTION 2. IC 29-3-12-1, AS AMENDED BY P.L.115-2012, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) Except as provided in section 6 or 7 of this chapter, the court shall terminate the guardianship of a minor upon:

- (1) the minor's attaining eighteen (18) years of age; or
- (2) the minor's death.

The court may terminate the guardianship of a minor upon the minor's adoption or marriage.

(b) The court shall terminate the guardianship of an incapacitated person upon:

- (1) adjudication by the court that the protected person is no longer an incapacitated person; or
- (2) the death of the protected person, **except as provided in subsections (f) and (g).**

(c) The court may terminate any guardianship if:

- (1) the guardianship property does not exceed the value of three thousand five hundred dollars (\$3,500);
- (2) the guardianship property is reduced to three thousand five hundred dollars (\$3,500);
- (3) the domicile or physical presence of the protected person is changed to another state and a guardian has been appointed for the protected person and the protected person's property in that state; or
- (4) the guardianship is no longer necessary for any other reason.

(d) When a guardianship terminates otherwise than by the death of the protected person, the powers of the guardian cease, except that the guardian may pay the claims and expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust, including payment and delivery of the remaining property for which the guardian is responsible:

- (1) to the protected person;
- (2) in the case of an unmarried minor, to a person having care and custody of the minor with whom the minor resides;
- (3) to a trust approved by the court, including a trust created by the guardian, in which:
 - (A) the protected person is the sole beneficiary of the trust; and
 - (B) the terms of the trust satisfy the requirements of Section 2503(c) of the Internal Revenue Code and the regulations



- 1 under that Section;
 2 (4) to a custodian under the Uniform Transfers to Minors Act
 3 (IC 30-2-8.5); or
 4 (5) to another responsible person as the court orders.

5 (e) When a guardianship terminates by reason of the death of the
 6 protected person, the powers of the guardian cease, except that the
 7 guardian may pay the expenses of administration that are approved by
 8 the court and exercise other powers that are necessary to complete the
 9 performance of the guardian's trust and may deliver the remaining
 10 property for which the guardian is responsible to the protected person's
 11 personal representative or to a person who presents the guardian with
 12 an affidavit under IC 29-1-8-1 or IC 29-2-1-2. If approved by the court,
 13 the guardian may pay directly the following:

- 14 (1) Reasonable funeral and burial expenses of the protected
 15 person.
 16 (2) Reasonable expenses of the protected person's last illness.
 17 (3) The protected person's federal and state taxes.
 18 (4) Any statutory allowances payable to the protected person's
 19 surviving spouse or surviving children.
 20 (5) Any other obligations of the protected person.

21 **(f) If an incapacitated person is subject to a guardianship at the**
 22 **time of the incapacitated person's death, the guardianship:**

- 23 **(1) is not terminated upon the incapacitated person's death;**
 24 **and**
 25 **(2) may not be terminated by the court because of the**
 26 **incapacitated person's death, except as provided in subsection**
 27 **(g).**

28 **(g) The court may not terminate a guardianship to which**
 29 **subsection (f) applies:**

- 30 **(1) until at least sixty (60) days after the incapacitated**
 31 **person's death; or**
 32 **(2) if the guardian, less than sixty (60) days after the**
 33 **incapacitated person's death, requests access under IC 5-14-3**
 34 **or IC 16-39-1-3 to records relating to the incapacitated**
 35 **person's death, until:**

36 **(A) the guardian is granted access to the records pursuant**
 37 **to the guardian's request; or**

38 **(B) the guardian's request for access to the records is**
 39 **denied and:**

- 40 **(i) the guardian states that the guardian does not intend**
 41 **to appeal the denial of access;**
 42 **(ii) the guardian has exhausted all administrative and**



1 **judicial appeals of the denial of access; or**
2 **(iii) the guardian is barred under IC 4-21.5 or IC 34-11**
3 **from appealing or from any further appeal of the denial**
4 **of access due to the passage of time.**

